

Houston International Terminal, Inc.
2435 Broadway
Pearland, TX 77581
713-254-6007

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September 23, 2010

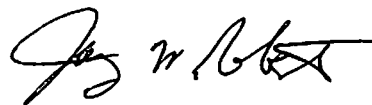
Mr. Robert Werner, Enforcement Officer
Superfund Enforcement Assessment Section (6SF-TE)
U.S EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733
VIA USPS Certified Mail # 7008 1830 0000 5699 0127

Re: San Jacinto River Waste Pits Superfund Site, Channelview, TX
SSID No. 06ZQ, EPA ID No. TXN000606611
CERLA 104(e) INFORMATION REQUEST

Dear Mr. Werner,

Enclosed please find Houston International Terminal Inc.'s response,
with enclosures, to your agency's Information Request.

Sincerely yours,



Jay W. Roberts
President
Houston International Terminal, Inc.

Enclosures

ENCLOSURE 4

SAN JACINTO RIVER WASTE PITS SUPERFUND SITE

INFORMATION REQUEST

QUESTIONS

1. Identify the person(s) that provides answers to the questions below on behalf of Houston International Terminal, Inc.

A. Jay W. Roberts

President

Houston International Terminal, Inc.

2435 E. BROADWAY

PEARLAND, TX 77581

B. William L. H. Morgan, Jr.

12815 Gulf Freeway

Houston, Texas 77034-4807

Telephone 281 481 5807

Email Billmorgan@msn.com

Attorney for Houston International Terminal, Inc.

2. Please identify the organizational relationship between Houston International Terminal, Inc. and Big Star Barge & Boat Company, Inc.

Big Star Barge & Boat Company, Inc. is a corporation organized in the State of Texas on July 11, 1969, owned 100% by Stella Roberts until her death on April 21, 2001, at which time 48% was distributed to Jack Roberts, 26% to Jay W. Roberts, and 26% to Diana L. Roberts. Houston International Terminal, Inc. is a corporation organized in the State of Texas on February 16, 1982 owned 52% by Jack Roberts and 48% by Stella Roberts until her death on April 21, 2001, at which time her interest was distributed 24% to Jay W. Roberts, and 24% to Diana L. Roberts.

3. Has HIT ever participated in any planning for dredging activities in the area of the San Jacinto River, along its south bank on the north side of the I-10 Bridge in Harris County, Texas (see Enclosure 5, Aerial photo).

HIT submitted an application with the Corps of Engineers for a dredging permit for the area and entered into a lease with MegaSand Enterprises, Inc. for MegaSand Enterprises, Inc. to dredge sand from the area.

4. Has HIT ever participated in any dredging activities in the area of the San Jacinto River, along its south bank on the north side of the I-10 Bridge in Harris County, Texas (see Enclosure 5, Aerial photo).

HIT entered into a lease with MegaSand Enterprises, Inc. for MegaSand Enterprises, Inc. to dredge sand from the area.

5. If your answer to either question #3 or #4 is yes:

- A. Please provide copies of all documents in your possession that describe or contain any information that pertains to HIT's participation in planning and/or dredging operations in the above described area of the San Jacinto River.

The dredging permit and lease with MegaSand Enterprises, Inc. is attached.

- B. Please describe the dredging activities that HIT participated in planning for and/or was involved with sand dredging operations conducted in the above described area of the San Jacinto River. Your answer should include, but not be limited to:

- 1) The period that actual dredging activities occurred.

During the term of the above described lease with MegaSand Enterprises, Inc.

- 2) The name of any third party that directed, controlled, or participated in HIT's involvement with dredging operations in the above described area of the San Jacinto River.

MegaSand Enterprises, Inc.

- 3) The location placement of any waste dredging material, i.e., disposition of "overburden" that resulted from sand dredging activities in the above described area of the San Jacinto River.

It is the understanding of HIT that a small part of the Overburden may have been place in the Corps of Engineers "mitigation" area, however, since Megasand Enterprises, Inc. was conducting the dredging operations HIT personnel aren't aware of all of the specifics of said operations.

6. If your answer to the above questions #3 and #4 is no, please explain why a Letter, dated November 20, 1998 from Houston International Terminal to Department of the Army (see Exhibit 5) identifies that, "The original permit was issued after much discussion during conferences and meeting with Parker Brothers. As you know Parker merged to form Parker LaFarge which set back our operations by at least a year. Only one (1) barge load was removed by Parker LaFarge....In late 1997 we entered into a working contract with Mega Sand (Dan & Brenda Moore) who agreed to the mitigation plan. In September 1997 dredging recommenced and work on the mitigation plan started."

NA.

7. Please identify the names of all dredging companies that you have reason to believe have, at any time, participated in the planning of, and/or participated in, dredging operations in the above described area of the San Jacinto River.

Houston International Terminal, Inc. was not a party to any dredging operations in the above described area of the San Jacinto River, Houston International Terminal, Inc. is

aware only of a lease whereby Houston International Terminal, Inc. authorized MegaSand Enterprises, Inc. to dredge sand from said area.

8. Please identify the owner of record for the area in the above described area of the San Jacinto River.

Big Star Barge & Boat Company, Inc.

9. If HIT is the owner of record for the above described area of the San Jacinto River, please provide EPA with a copy of the current recorded deed that documents HIT's ownership.

NA

DEPARTMENT OF THE ARMY PERMIT

Permittee Houston International Terminal

Permit No. 19284

Issuing Office San Antonio District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: To dredge sand for commercial sale and to provide a barge berthing area, and to create a fenced smooth cordgrass marsh area for mitigation; in accordance with the attached plans in six sheets, sheet one of which is entitled "HOUSTON INTERNATIONAL TERMINALS."

Project Location: San Jacinto River, along the south bank, north of the Interstate 10 bridge in Channelview, Harris County, Texas.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on 31 December 1995. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

END FORM 1721, Nov 80

EDITION OF SEP 82 IS OBSOLETE.

(33 CFR 225 (Appendix A))

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

☒ Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

☒ Section 404 of the Clean Water Act (33 U.S.C. 1344).

☐ Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

a. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. **Reliance on Applicant's Data:** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. **Reevaluation of Permit Decision.** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 309.150) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. **Extensions.** General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.



(PERMITTEE)

HOUSTON INTERNATIONAL TERMINAL

11 May 1992

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.



(DISTRICT ENGINEER)

BRUCE H. BENNETT, Acting Chief,
North Evaluation Section
FOR COLONEL BRINK P. MILLER

11 MAY 1992

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE)

(DATE)

**LEASE AGREEMENT FOR MINING AND DREDGING
OF SAND**

This agreement is made by MegaSand Enterprises, Inc., (MS) herein called Lessee and HOUSTON INTERNATIONAL TERMINAL (HIT), herein called Lessor, whothor one or more. This lease is to be for excavating, dredging, or mining of sand, dirt and gravel, and does not affect the mineral rights of the land.

In consideration of the mutual covenants and agreements herein set forth, and other good and valuable consideration, Lessor does hereby demise and lease and Lessee does hereby lease from Lessor property located at HIT terminal on the San Jacinto River, North of the I-10 East bridge at the San Jacinto River in East Harris County, Texas, herein called and designated as "Leased Property" for mining, dredging, removing or selling commercially recoverable sand and associated products.

TERMS

The term of this lease shall commence immediately upon execution of this agreement and shall continue until the current Corps Of Engineers Permit number 19824 issued may 11, 1992 scheduled to terminate November 30, 1998, and not less than one (1) extension, renewal or newly acquired permit shall expire. Upon termination of the current permit to dredge, HIT shall be responsible for extending the permit for a minimum period of three (3) years. If HIT is unable to extend the permit, this agreement will terminate upon expiration of the permit.

Notice of intent to vacate or intent not to renew the lease must be given on or before the 30 days prior to expiration of any permit to dredge issued by the Corps of Engineers, or applicable authority.

Lessee agrees to abide by all Federal, state and Local laws so far as the operation is concerned.

This lease cannot be reassigned to any individual, company, corporation or partnership without the express written permission of Lessor.

Lessee agrees to pay the agreed price for all sand, dirt gravel or other products taken from the land by the 20th of the following month. Sand shall be measured and paid by either by cubic yards, or by the ton, whichever is applicable.

Lessee agrees to pay \$.65 (65 cents) per cubic yard for sand recovered and measured for resale, or fifty cents (\$.50) per ton for sand recovered for resale.

Lessor agrees that for a the period of the lease that it will not lease any part of this property for the excavation, mining or dredging of sand except for the Lessee named in this contract.

Possession of the Leased Property shall be delivered to Lessee on the commencement date unless possession is delayed due to construction or repairs in which event Lessor shall not be liable to Lessee for such delay, and this Lease shall remain in effect subject to the following terms:

- (a) All payments shall be abated on a daily basis during such delay, and
- (b) should the delay exceed 3 days after the commencement date, Lessee may terminate this Lease by giving written notice to Lessor of such termination and Lessor shall immediately refund to Lessee any deposits and rentals paid and neither party shall thereafter have any obligations to the other pursuant to this Lease.

Minor maintenance or repairs to be performed on commencement date shall not prevent delivery of possession to Tenant.

Lessee agrees that any breach of any part of this contract constitutes loss of good faith and automatically and immediately terminates the total contract.

Should Lessee pay with a check and the check is returned by his/her bank because of insufficient funds, or because the account has been closed, or any other reason that is the fault or within the control of Lessee, a penalty of twenty-five (\$25.00) dollars shall be assessed for the returned check and loss of use of the funds for the period that the check has been outstanding. If one check is returned for any of the above reasons, then Lessee may be required to pay from that day forward for the remainder of the lease term with cash, or certified funds (certified check, or money order).

HIT hereby covenants and agrees to provide an area for the installation and maintenance of a cyclone wash sand and cement stabilized sand plant with electric utilities provided on site for the operation which shall be a minimum of 15,000 square feet in an area of approximately 300 feet by 500 feet. HIT agrees to provide unimpeded access and easement(s) over its property for the ingress and egress of MS vehicular traffic and all traffic to support the operation.

Lessee agrees to release Lessor from any and all liabilities arising from any dispute wherein the handling use or sale of sand is concerned including any and all personal injuries and suits.

Lessor and, or its agent shall have the right at all reasonable times during the term of this lease with reasonable notice to enter the leased property for the purpose of inspecting them to determine if the terms of this lease are being kept.

Texas law is to apply and any action is to be brought in the Courts of Harris County, Texas, or the nearest Federal Courts thereto.

WARRANTIES

HIT warrants that the property covered by this agreement and the Corps of Engineers Permit is owned and controlled by HIT and will indemnify and hold MS harmless from and in any action covering the property, its ownership, control, or use consistent with the terms and conditions contained herein.

HIT warrants the Corps of Engineers Permit is valid, existing and current as of the date of signing of this agreement and that no other permits or authorizations are needed, necessary or required by any of the federal, state or local governmental body or agency for MS to conduct its operations on the leased property. Should any other permits or authorizations be needed, necessary, or be required by any of the federal, state or local governmental body or agency, HIT shall take whatever actions are necessary to acquire such permit or authority and will indemnify and hold harmless MS from all adverse actions concerning the permits or authorizations.

MS shall operate within the parameters and conditions of any permit or authorization and shall indemnify and hold HIT harmless for its failure to operate within such permit or authorization.

Any property left in or about the property by Lessee after the expiration of the lease, abandoning, or vacating the property without notice to Lessor, shall be considered as abandoned and may be disposed of as Lessor sees fit, without recourse by Lessee. All property placed on the property is subject to a lien in the favor of Lessor to secure payment of all sums due and owing hereunder.

HIT hereby covenants and agrees to provide dockage and docking facilities for an area for the safe and unimpeded loading and unloading of sand barges and marine uses to support the operation.

Lessee shall during the term of this lease at its own expense maintain the leased property and the road into and out of the property in as safe and good condition as they were in at the date of this lease, save normal wear and tear, unless said road, or access is used by HIT, its agents, other tenants or assigns, in which case maintenance of the road shall be the responsibility of HIT, its other tenants, agents or assigns.

Should Lessor decide to sell the leased property, Lessee shall be given first right of refusal to purchase the property at a price determined by the then remaining sand reserves, or the price offered by any bona fide purchaser.

Lessor may display, or cause to be displayed on the property a real estate for sale or for lease sign, or other type notice that is intended to give inform the passing public that the property is for sale. Said notice shall state that it is by appointment only and give a phone number whereby the sales agent, or owner may be reached, so as to not inconvenience the Lessee.

Should Lessee be in default in payment of any rents due, in the prompt and full performance of any provision of this lease, or, if the leasehold interest of Lessee be levied on or attached by process of law, or if Lessee makes an assignment for the benefit of creditors, or if Lessee abandons the property, then and in any such event, Lessor may if he/she so elects, either terminate this lease, or without terminating this lease, terminate Lessee's right to possession of the leased property. Recovery of the property shall not relieve the Lessee of any obligations hereunder. All properties on the leased property shall be subject to a lien in favor of Lessor for payment of all sums due and owing.

INDEMNITIES

MS shall operate within the parameters and conditions of any permit or authorization and shall indemnify and hold HIT harmless for its failure to operate within such permit or authorization.

Lessee agrees to indemnify and hold Lessor harmless and free from any and all liability for injury or death of any person, or damage to property arising from use or occupancy of the leased property.

***** It is understood and agreed to by both parties of this lease agreement that a mitigation plan has been submitted to the US Corps of Engineers and Lessee has a copy of that plan and will assist in fulfilling such plan as operation permits.

ATTORNEY'S FEES

Should Lessor prevail in any legal action brought hereunder, Lessor shall be entitled to all costs of the action, including reasonable attorney's fees.

WAIVER

No failure to enforce any term or condition shall be considered a waiver of Lessor's right to enforce the terms or conditions at some later date. Acceptance of less than full rent shall not be considered a waiver of full rent due and owing.

Notices required to be given shall be effective if given in writing at 18001 Interstate 10 East, Channelview, TX 77530, addressed to Lessor, or at 11210 Sralia Road Crosby, TX 77532 addressed to Lessee, or at any other address as may be designated in writing by either party, certified mail, return receipt requested.

THIS IS A LEGAL AND BINDING CONTRACT. READ IT CAREFULLY! You have the right to have it read by an attorney of your choice at your expense if you do not understand your rights and obligations hereunder.

Three sets have been signed as originals with an effective date of the latest date shown by the signatures below.

LESSOR

HOUSTON INTERNATIONAL TERMINAL, INC.

by: Captain Jack Roberts, Pres.

Date

LESSEE

MegaSand Enterprises, Inc.

by: Brenda Moore, Pres.

Date

ATTORNEY'S FEES

Should Lessor prevail in any legal action brought hereunder, Lessor shall be entitled to all costs of the action, including reasonable attorney's fees.

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LESSOR

HOUSTON INTERNATIONAL TERMINAL, INC.


by: Captain Jack Roberts, Pres.

24 June 97
Date

LESSEE

MegaSand Enterprises, Inc.

by: Brenda Moore, Pres.

Date

Houston International Terminal, Inc.
2435 Broadway
Pearland, TX 77581

7008 1830 0000 5699 0127

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Mr. Robert Werner, Enforcement Officer
Superfund Enforcement Assessment Section (6SF-TE)
U.S EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

ROBERT WERN
Location:
SUPERFU
Sender:
HOUSTON

09/27/10 11:47



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